

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: BPS DIRECT, LLC, AND
CABELA'S, LLC, WIRETAPPING

: MDL 3074
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:
: E.D.Pa. ACTION NOS.:
: 23-md-3074
: 22-cv-4709
: 23-cv-2282
: 23-cv-2287
: 23-cv-2293
: 23-cv-2294
: 23-cv-2295
: 23-cv-2306
: 23-cv-2338

ORDER

AND NOW, this 12th day of July 2023, upon Plaintiffs' counsel confirming an agreement to define interim co-lead and liaison counsel and appointed members to Plaintiffs' steering committee, and Defendants' recommendation for lead counsel (ECF Doc. No. 42), hearing no objection, mindful we will be meeting with counsel on July 25, 2023 to further confirm counsel's obligations, noting other counsel in the transferred matters did not move for admission consistent with our June 20, 2023 and July 6, 2023 Orders (ECF Doc. Nos. 4, 29), and for good cause shown having considered all of the factors in the *Manual for Complex Litigation (Fourth)* and other accepted guidance with respect to the appointment of counsel, it is **ORDERED**:

1. We **designate** counsel upon consent to serve as Plaintiffs' co-lead counsel finding they represent a variety of qualified attorneys involved in the case to date and subject to further Order:

a. **Plaintiffs' Co-Lead Counsel:** We designate uncontested counsel as

Plaintiffs' Co-Lead Counsel:

Kate M. Baxter-Kauf
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Tel: (612) 339-6900
kmbaxter-kauf@locklaw.com

Nicholas A. Colella
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
Tel: (412) 322-9243
NickC@lcllp.com

Joseph H. Kanee
MARCUS & ZELMAN LLC
701 Brickell Avenue, Suite 1550
Miami, FL 33131
Tel: (786) 369-1122
joseph@marcuszelman.com

b. Responsibilities of Plaintiffs' Co-Lead Counsel: Plaintiffs' Co-Lead

Counsel shall be responsible for coordinating the Plaintiffs' activities during pretrial proceedings and, as to be discussed further at our July 25, 2023 pre-trial conference, shall be prepared to confirm their obligations to:

- i. Determine (after consultation with other co-counsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Plaintiffs on all matters arising during pretrial proceedings;
- ii. Coordinate the initiation and conduct of discovery on behalf of Plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure relating to discovery or any other subsequent order of this Court;

iii. Continue and further settlement negotiations but not enter binding agreements except to the extent expressly authorized;

iv. Delegate specific tasks to other counsel to ensure effective, efficient, and economical pretrial progress

v. Enter stipulations necessary for the conduct of the litigation;

vi. Prepare and distribute periodic status reports to co-counsel;

vii. Maintain detailed contemporaneous time and disbursement records

covering service of designated counsel and establish guidelines, for our later review as warranted, confirming trial counsel's retention and monthly review of time records and expenses;

viii. Monitor the activities of co-counsel to ensure Plaintiffs meet our schedules and avoid unnecessary expenditures of time and funds;

ix. Perform such other duties as may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further Order; and,

x. Submit, if appropriate, additional or amended counsel for our designation.

c. Plaintiffs with divergent positions because of the status of their clients may present written and oral argument with leave of the Court and provided in doing so they do not repeat arguments, questions, or actions of Co-Lead Counsel.

d. **Plaintiffs' Liaison Counsel:** We designate uncontested counsel as Plaintiffs' Liaison Counsel:

Nicholas A. Colella
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
Tel: (412) 322-9243
NickC@lcllp.com

e. Responsibilities of Plaintiffs' Liaison Counsel: Plaintiffs' Liaison Counsel, as to be discussed further at our July 25, 2023 pre-trial conference, shall be prepared to confirm his obligations to:

- i. Maintain and distribute to co-counsel and to Defendants' Counsel an up-to-date service list regularly;
- ii. Receive and, as appropriate, distribute Orders from the Court and documents from opposing parties and counsel to co-counsel; and,
- iii. Assist in coordinating activities, discovery, meetings and hearings, including in resolving scheduling conflicts among the parties.

f. Plaintiffs' Steering Committee: We designate uncontested counsel to Plaintiffs' Steering Committee:

Carey Alexander
SCOTT & SCOTT, ATTORNEYS AT LAW, LLP
230 Park Avenue
Ste 17th Floor
New York, NY 10169
Tel: (212) 223-6444
calexander@scott-scott.com

MaryBeth V. Gibson
THE FINLEY FIRM, P.C.
3535 Piedmont Rd.
Building 14, Suite 230
Atlanta, GA 30305

Tel: (404) 978-6971
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Steven M. Nathan
HAUSFELD LLP
33 Whitehall Street Fourteenth Floor
New York, NY 10004
Tel: (646) 357-1100
snathan@hausfeld.com

g. **Responsibilities of Plaintiffs' Steering Committee:** Plaintiffs' Steering Committee, as to be discussed further at our July 25, 2023 pre-trial conference, shall be prepared to confirm their obligations to consult with Plaintiffs' Co-Lead and Liaison Counsel in coordinating the Plaintiffs' pretrial proceedings, in planning and conducting discovery, and in planning and preparing for trial.

h. **We designate the Defendants' Lead Counsel:**

Jennifer McLoone
SHOOK HARDY & BACON LLP
201 South Biscayne Blvd., Suite 3200
Miami, FL 33131
Tel: 305-358-5171
jmcloone@shb.com

2. No communications among Plaintiffs' Counsel or among Defendants' Counsel shall be taken as a waiver of a privilege or protection to which the parties would otherwise be entitled mindful we are also not expanding or creating a protection or privilege counsel do not already enjoy.

3. The Clerk of Court shall **terminate**, without prejudice to later moving compliant with our Policies, the present representation in this District of the identified attorneys below in No.

23-md-3074 and:

- a. No. 23-2287: Attorneys Nelson, Swigart, Shay, and Straus;
- b. No. 23-2282: Attorneys Wong and Remy;
- c. No. 23-2295: Attorneys Bleichner, Krzeski, Yiatras, Scott, and El-Zein;
- d. No. 23-2306: Attorneys Straus and Wahl; and,
- e. No. 23-2338: Attorney Convery.



KEARNEY, J.